

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRAVIS J VERONDA**  
Claimant

**DONS TRUCK SALES INC**  
Employer

**APPEAL 21A-UI-23949-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/19/21  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer, Don's Truck Sales, Inc., filed an appeal from the October 22, 2021, (reference 06) unemployment insurance decision that allowed benefits based upon the determination that the employer discharged claimant for absenteeism related to illness or injury, which was excused in nature. The parties were properly notified of the hearing. A telephone hearing was held on January 6, 2022, and was consolidated with the hearing for appeal number 21A-UI-23948-AR-T. The claimant, Travis J. Veronda, participated personally. The employer participated through Gene Carpenter. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?  
Is claimant able to and available for work effective September 19, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service manager from September 7, 2021, until this employment ended on September 15, 2021, when he was discharged.

On September 13, 2021, claimant texted Carpenter, his supervisor, prior to the start of the shift to inform Carpenter that he had injured his shoulder over the weekend and needed to see the doctor. Carpenter asked claimant to return to work as soon as possible, and reassured him that his duties would include things he could do with one arm. Claimant did not see the doctor that day until late in the day.

On September 14, 2021, claimant again texted Carpenter prior to the start of the shift to tell him that his shoulder was not better and he would not be in to work that day. Later in the day, he informed Carpenter that, in addition to the shoulder issue, claimant's debit card had been compromised and it would take time for the bank to issue a new card and reimburse claimant for the money lost. He said he did not have money to get gas to get to work, but would try to make arrangements to get to work.

On September 15, 2021, claimant texted Carpenter to tell him that he could not come to work because he needed to see the doctor about his shoulder again. Claimant notified Carpenter in advance of the start time of his shift. Carpenter terminated claimant's employment via text later that morning because claimant had not been able to come to work reliably.

Claimant estimated that he was able to drive again after his injury within a week. His ability to drive was the primary limitation of the injury. His transportation issues also resolved within a short period after his discharge. He was able to return to work similar to his work with this employer after approximately a week.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up

to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871—24.32(7); *Cosper*, 321 N.W.2d at 6; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, 734 N.W.2d at 554. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct **except for illness or other reasonable grounds** for which the employee was absent and that were properly reported to the employer. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) (holding "rule [2]4.32(7)...accurately states the law").

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. Second, the absences must be unexcused. *Cosper*, 321, N.W.2d at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d at 10.

A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. Though the administrative law judge acknowledges the issue with the debit card contributed to the employer's decision to discharge, claimant's absences were related primarily to his shoulder injury and treatment for that injury. That was the reason claimant provided to the employer. Claimant also properly reported these absences prior to the start of his shift. Because claimant's absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

The next question is whether claimant was able to and available for work effective September 19, 2021. For the following reasons, the administrative law judge concludes he was.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871—24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work,

and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant testified that, though he had an injury and transportation issues during his employment, those issues resolved very shortly after his discharge. He testified that he began looking for full-time work and that there were no other barriers to his full-time employment shortly after his discharge. He was able to and available for work for the period in question.

Because the claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The October 22, 2021, (reference 06) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. He is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

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January 31<sup>st</sup>, 2022  
Decision Dated and Mailed

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